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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: **MAY 26 2009**

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a sandwich shop. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage for 2001, 2002, 2003, 2004 and 2005. The director denied the petition accordingly.

The petitioner submitted a Form I-290B appeal in this matter. In the section reserved for the basis of the appeal, the petitioner inserted,

“The Director’s decision erred in applying the legal requirements contained in regulations 8 C.F.R. § 204.5(g) to the financial information about Employer/Petitioner’s ability to pay Beneficiary’s annual salary; and misconstrued the ability to pay information contained in Petitioner’s tax and financial documents submitted in support of I-140. Petitioner has good record of operating a viable business, of substantial assets, and of paying salary to its employees.”

On appeal, counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days.

Counsel dated the appeal April 5, 2007. As of this date, more than 25 months later, the AAO has received nothing further. Additionally, counsel did not submit any evidence on appeal.

The regulation at 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii) states that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected additional time, it may submit the brief directly to the AAO. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: “An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

The petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.